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OCT 25 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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October 25, 2001

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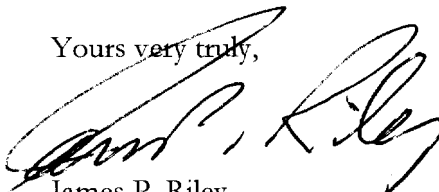
Magalie Salas, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, D.C. 20554

Re: MM Docket No. 90-189

Dear Ms. Salas:

Transmitted herewith is the original with four copies of a Joint Request for Approval of Settlement and for Termination of Proceeding, filed by Gold Country Communications, Inc., and Nevada County Broadcasters, Inc., with respect to the above-referenced FM allocation rulemaking proceeding.

Yours very truly,



James P. Riley  
Counsel for Nevada County Broadcasters, Inc.

JPR:deb

Enclosures

cc: Robert Hayne, Esq. (By Fax: 202-418-2053)  
David Tillotson, Esq. (By Facsimile)  
Counsel for Gold Country Communications, Inc.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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OCT 25 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. 90-189
Table of Allotments,	)	RM-6904
FM Broadcast Stations.	)	RM-7114
(Farmington, Grass Valley, Jackson,	)	RM-7186
Lindon, Placerville, and Fair Oaks,	)	RM-7415
California, and Carson City and	)	RM-7298
Sun Valley, Nevada	)	

To: Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**JOINT REQUEST FOR APPROVAL OF SETTLEMENT AND  
FOR TERMINATION OF PROCEEDING**

Gold Country Communications, Inc. ("Gold Country"), the licensee of Station KNGT(FM), Jackson, California, and Nevada County Broadcasters, Inc. ("Nevada County"), the licensee of Station KNCO-FM, Grass Valley, California (each a "Party" and collectively, the "Parties"), under Section 1.420 of the Commission's rules, hereby seek approval of their attached Agreement (Exhibit 1) by which Nevada County's application for review of the 1999 *Memorandum Opinion and Order* in the above-captioned proceeding will be resolved, and prompt improvement of FM service by KNGT(FM) and KNCO-FM will be achieved without the prospect of years of further litigation.

To support these requests, the following is shown:

1. Stations KNGT(FM) and KNCO-FM each is licensed to operate on channel 232A, and, as grandfathered short-spaced Class A stations, are presently limited to facilities no greater than the equivalent of 3kW ERP at 100 meters ARC HAAT. Gold Country and Nevada County

have been proponents in MM Docket 90-189 (the “Rulemaking Proceeding”) of conflicting proposals for FM channel reallocations. In the *First Report and Order* in the Rulemaking Proceeding, 10 FCC Rcd 9938 (1995), KNCO-FM was upgraded from Channel 232A to 232B1 and KNGT(FM) was reassigned from Channel 232A to Channel 259A. In the *Memorandum Opinion and Order* arising from Gold Country’s petition for reconsideration of the First Report and Order, 14 FCC Rcd 18971 (1999), KNGT(FM) was upgraded to Channel 232B1 and KNCO-FM was reassigned from Channel 232A to 231A. Now pending before the Commission is Nevada County’s application for review of the 1999 *Memorandum Opinion and Order*, Gold Country’s reply thereto and Nevada County’s response to Gold Country.

2. Gold Country and Nevada County have agreed to terminate their conflicting claims for assignment of Channel 232B1 and to terminate Nevada County’s support for allotment of Channel 232A to Farmington, California, and to each seek authorization, pursuant to Section 73.213(c)(2) of the FCC’s rules, to operate with the equivalent of 6kW ERP at 100 meters ARC HAAT on their existing channel, 232A, at their existing licensed sites and heights, in the belief that implementation of the Agreement will lead to prompt and substantial improvement of local FM service in the areas surrounding Jackson and Grass Valley.

3. Each Party is filing concurrently with this Joint Request, electronically, an application on FCC Form 301 seeking a construction permit for each Party’s station to operate with the equivalent of 6kW ERP at 100 meters ARC HAAT on its existing channel, 232A, at its existing licensed site and height. Termination of the Rulemaking Proceeding, at the Parties’ request, is specifically made contingent upon the simultaneous grants by the Commission of the

Parties' Form 301 applications and those grants becoming final, the only exception to this contingency being that stated in Section 3 of the attached Agreement.

4. The Parties certify in Section 6 of the Agreement that neither of the Parties have received or will receive any money or other consideration beyond that set forth in the Agreement, in exchange for the dismissal or withdrawal of their respective requests for allotment of Channel 232B1 to its respective community of license or for Nevada County's withdrawal of support for the allotment of Channel 232A to Farmington.

WHEREFORE, it is respectfully requested that the Commission approve the Agreement attached hereto; terminate the Rulemaking Proceeding with no further consideration of or rulings upon the pending pleadings, making the termination expressly contingent upon actions with respect to the Form 301 application as specified in the Agreement; set aside the allotments of Channel 232 B1 to Jackson and Channel 231A to Grass Valley and all related orders in the 1999 *Memorandum Opinion and Order* (except denial of the allotment of Channel 232A to Farmington); and order that the termination of the Rulemaking Proceeding become final upon the finality of the grants of the Parties' Form 301 applications, subject to the exception set forth in Section 3 of the Agreement between the Parties. The Parties further request that the Commission waive any procedural rule or policy which might delay or hinder processing of the Form 301

applications prior to finality of the termination of the Rulemaking Proceeding, and to take appropriate steps to insure prompt processing of those applications.

Respectfully submitted,

GOLD COUNTRY COMMUNICATIONS, INC.

By: David Tillotson  
David Tillotson  
4606 Charleston Terrace, NW  
Washington, DC 20007-1911  
202-625-6241

Its Counsel

NEVADA COUNTY BROADCASTERS, INC.

October 25, 2001

By: James P. Riley  
James P. Riley  
of  
Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
703-812-0400

Its Counsel

## **AGREEMENT**

Gold Country Communications, Inc. ("Gold Country"), a California corporation and the licensee of Station KNGT (FM), Jackson, California, and Nevada County Broadcasters, Inc. ("Nevada County", and collectively with Gold Country referred to as the "Parties"), a California corporation and the licensee of Station KNCO-FM, Grass Valley, California, this 18th day of October, 2001, do hereby, for the reasons stated below, agree as hereinafter set forth.

## **RECITALS**

A. Stations KNGT (FM) and KNCO-FM each is licensed to operate on channel 232A, and, as grandfathered short-spaced Class A stations, are limited to facilities no greater than the equivalent of 3 kW ERP at 100 meters ARC HAAT. Gold Country and Nevada County have been proponents in MM Docket 90-189 (the "Rulemaking Proceeding") of conflicting proposals for FM channel reallotments. In the *First Report and Order* in the Rulemaking Proceeding, 10 FCC Rcd 9938 (1995), KNCO-FM was upgraded from Channel 232A to 232B1 and KNGT (FM) was reassigned from Channel 232A to Channel 259A. In the *Memorandum Opinion and Order* arising from Gold Country's petition for reconsideration of the *First Report and Order*, 14 FCC Rcd 18971 (1999), KNGT (FM) was upgraded to Channel 232B1 and KNCO-FM was reassigned from Channel 232A to 231A. Now pending before the Commission is Nevada County's application for review of the 1999 *Memorandum Opinion and Order*, Gold Country's reply thereto and Nevada County's response to Gold Country.

B. During the pendency of Nevada County's application for review of the 1999 *Memorandum Opinion and Order*, the Parties have discussed potential forms of settlement whereby the Rulemaking Proceeding might be terminated without further adversarial pleadings and appeals, leading to an earlier implementation of improved FM service in the public interest.

C. In these settlement discussions, Nevada County and Gold Country have examined and considered one another's engineering claims and studies, and have evaluated proposals for an overall improvement in FM service in the western foothills of the Sierra Nevada mountains east of California's central valley, where both KNCO-FM and KNGT (FM) operate and provide local service. Based upon their consideration and evaluation, the Parties have reached the agreement set forth herein: to terminate on the conditions and terms set forth herein their conflicting claims for assignment of Channel 232B1 and to terminate Nevada County's support for allotment of Channel 232A to Farmington, California, and to each seek authorization, pursuant to this Agreement and Section 73.213(c)(2) of the FCC's rules, to operate on their existing licensed channel 232 with the equivalent of 6 kW ERP at 100 meters ARC HAAT at their existing licensed sites and heights, in the belief that implementation of this agreement will lead to prompt and substantial improvement of local FM service in the areas surrounding Jackson and Grass Valley.

NOW, THEREFORE, the Parties agree as follows:

1. The Parties will jointly file pursuant to Section 1.420 of the FCC's rules a "Request for Approval of Settlement and for Termination of Proceeding" ("Request for Approval") with respect to the Rulemaking Proceeding consistent with the terms and conditions of this Agreement, and each will concurrently therewith electronically file an application on FCC Form 301 seeking a construction permit for each Party's station to operate on its existing licensed channel 232 with the equivalent of 6 kW ERP at 100 meters ARC HAAT at its existing licensed site and height (the "Form 301 applications"). This Agreement will be submitted with the Request for Approval and with each of the concurrently filed Form 301 applications, and shall constitute the consent of each Party to the filing of the other Party's Form 301 application.

Termination of the Rulemaking Proceeding pursuant to this Agreement is contingent upon the simultaneous grants by the FCC of the Form 301 applications and those grants becoming final, no longer subject to reconsideration, appeal or review, subject to the exception set forth in Section 3 below, and the Request For Approval will expressly advise the Commission of this contingency.

2. The Request for Approval will ask that the Commission terminate the Rulemaking Proceeding with no further consideration of or rulings upon the pending pleadings, that it set aside the allotments of Channel 232B1 to Jackson and Channel 231A to Grass Valley and all related orders in the 1999 *Memorandum Opinion and Order* (except denial of the allotment of Channel 232A to Farmington, which denial is consistent with this Agreement), and that the Commission order terminating the Rulemaking Proceeding become final upon the finality of the grants of the Parties' Form 301 applications, subject to the exception set forth in Section 3 below. The Request for Approval will also request waiver of any FCC procedural rule or policy which might delay or hinder processing of the Form 301 applications prior to finality of the termination of the Rulemaking Proceeding.

3. Each Party will diligently and in good faith prosecute its Form 301 application pursuant to Section 73.213(c)(2) through to an order which grants that application and becomes final or an order of the Commission *en banc* which denies the application and as to which order reconsideration by the Commission may not be sought. Neither Party shall be required hereby to prosecute a court appeal of an order denying its Form 301 application. If either Party fails to prosecute its Form 301 application as required by the first sentence of this section, it shall be deemed to have waived all provisions in this Agreement making termination of the Rulemaking Proceeding contingent upon the simultaneous grants of the Form 301 applications, to have



consented to the noncontingent grant of the other Party's Form 301 application, and to have consented to the termination of the Rulemaking Proceeding. The Party which has failed to prosecute its Form 301 application as required by the first sentence of this section shall not interpose any objection to or seek to hinder the termination of the Rulemaking Proceeding or the grant of the other Party's Form 301 application, the implementation by the other Party of operation with the equivalent of 6 kW ERP at 100 meters ARC HAAT, and the grant of the other Party's application for license to cover the construction permit issued upon grant of its Form 301 application.

4. Nevada County will at its expense prepare any documentation requested by the Commission pursuant to Section 73.213(c)(2) to show that the grant of the Form 301 applications is consistent with the public interest. In all other regards, the Parties shall each bear their own expenses in prosecuting approval by the Commission of this Request for Approval and in preparing, filing and prosecuting the Form 301 applications. Neither Nevada County nor Gold Country will pay to or receive from the other any consideration beyond that set forth herein for withdrawing its request for allotment of Channel 232B1 to its respective community of license or for Nevada County's withdrawal of support for the allotment of Channel 232A to Farmington.

5. The Parties will submit the joint Request for Approval and the Form 301 applications as promptly as possible and no later than twenty-one (21) days after the date of this Agreement or the first business day immediately after that twenty-first day.

6. With respect to the matters required by Section 1.420(j) of the FCC's rules to be certified to by the Parties, the signatures of the Parties hereto attest to their declaration under penalty of the laws of perjury that the statements herein concerning such matters are true and correct.

7. Each Party represents to the other that it is authorized by any necessary corporate action to enter into this Agreement as a legally binding agreement, that its entering into this Agreement does not conflict with any other Agreement or any court order to which it is subject, that it intends this Agreement to be binding and enforceable, and that the person signing this Agreement for that Party is duly authorized to do so. Each Party recognizes and agrees that this Agreement will be enforceable by, at the election of the party seeking enforcement, the equitable remedy of specific performance in light of the unique relationship of the Parties' assigned FM channels and the great difficulty in determining the proper amount of monetary damages in the event of a breach of this Agreement.

8. Any notice required or permitted by this Agreement to be given by one Party to the other shall be in writing and deemed given upon deposit as prepaid first class United States mail with return receipt requested, or when delivered to an express service which provides a receipt of delivery if delivery to the addressee can be proven by the express service's regularly provided receipt, with notice addressed as follows:

To: Gold Country Communications, Inc.  
PO Box 609  
1500 S. Hwy 49, Suite 206  
Jackson, CA 95642  
Telephone: 209-223-0241  
Attention: Laurence Rutter

with copy, not constituting notice, to

David Tillotson, Esquire  
4606 Charleston Terrace, NW  
Washington, DC 20007-1911  
Telephone: 202-625-6241

To: Nevada County Broadcasters, Inc.

1255 East Main Street  
Grass Valley, CA 95945  
Telephone: 916-272-3424  
Attention: Bob Breck

with copy, not constituting notice, to

James P. Riley, Esq.  
1300 N. 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
Telephone: 703-813-0400

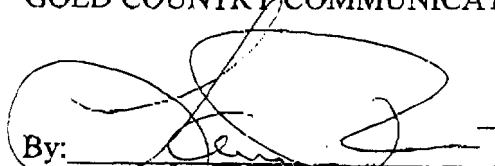
9. This Agreement may be executed in counterparts with the same force and effect as if all signatures were upon each counterpart. This Agreement will come into effect upon the exchange of executed signature pages to this Agreement by and between the Parties.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of California (not including the choice of law rules thereof).


11. This Agreement sets forth the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes any prior negotiations, agreements, understandings or arrangements between the Parties hereto with respect to the subject matter hereof. No terms or provisions of this Agreement may be amended, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom the enforcement of such amendment, waiver, discharge or termination is sought.

IN WITNESS WHEREOF, the Parties have executed this Agreement, or have caused this Agreement to be executed by their duly authorized officers, as of the date first above written.

GOLD COUNTRY COMMUNICATIONS, INC.

By:   
Title: PRESIDENT

NEVADA COUNTY BROADCASTERS, INC.

By:   
Title: President